

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIM ALLEN and LAINIE RIDEOUT, on
behalf of themselves, all others similarly
situated, and the general public,

Plaintiff,

v.

SIMILASAN CORPORATION and
SIMILASAN AG,

Defendants.

Case No. 12cv0376-BTM-WMC

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

On April 18, 2012, Defendant Similasan Corporation ("Defendant" or "Similasan") filed a motion to dismiss or strike Plaintiffs' First Amended Complaint ("FAC") (ECF No. 14). For the reasons below, Defendants' motion is hereby **GRANTED**, but its request for reasonable attorney's fees is **DENIED**. The Court **DISMISSES** the FAC with leave to amend within twenty-one (21) days.

//
//
//
//
//
//
//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14

I. BACKGROUND

Plaintiffs Kim Allen and Lainie Rideout ("Plaintiffs") filed the FAC against Similasan Corporation and Similasan AG on April 2, 2012, alleging, *inter alia*, violations of California's Consumers Legal Remedies Act ("CLRA"), California Unfair Competition Law ("UCL"), California False Advertising Law ("FAL"), breach of express and implied warranties, and unjust enrichment. Similasan AG has since been dismissed by joint motion of the parties. (See ECF No. 25.)

Plaintiff Kim Allen is a resident of Florida. Plaintiff Lainie Rideout is a resident of California. Defendant Similasan Corporation markets and sells homeopathic products throughout the United States. Plaintiffs allege that they purchased various products¹ on the basis of unsubstantiated advertising claims made by Defendant on the products' packaging and on Defendant's website, and that Defendant was unjustly enriched thereby.

15
16
17
18
19
20
21
22
23
24
25
26

II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should be granted only where a plaintiff's complaint lacks a "cognizable legal theory" or sufficient facts to support a cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). When reviewing a motion to dismiss, the allegations of material fact in plaintiff's complaint are taken as true and construed in the light most favorable to the plaintiff. See Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).

Although detailed factual allegations are not required, factual allegations "must be enough to raise a right to relief above the speculative level." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007). "A plaintiff's obligation to prove the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. "[W]here the well-pleaded facts do not permit the court

¹ In the FAC, it is alleged that Plaintiff Allen purchased the following Similasan products: Stress & Tension Relief, Anxiety Relief, Sleeplessness Relief, and Earwax Relief. See FAC ¶¶ 8-31. It is alleged that Plaintiff Rideout purchased Nasal Allergy Relief and Sinus Relief. Id. at ¶¶32-43.

1 to infer more than the mere possibility of misconduct, the complaint has alleged—but it has
2 not show[n]—that the pleader is entitled to relief.” Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)
3 (internal quotation marks omitted).

4 5 **III. DISCUSSION**

6 Plaintiffs assert six causes of action: (1) violation of the CLRA, (2) violation of the
7 UCL, (3) violation of the FAL, (4) breach of express warranty, (5) breach of implied
8 warranty of merchantability, and (6) money had and received, money paid and unjust
9 enrichment.

10 In its motion to dismiss, Similasan argues, *inter alia*, that Plaintiff Rideout was
11 improperly joined, that the Court has no personal jurisdiction over Similasan as to Plaintiff
12 Allen’s claims, that both Plaintiffs lack standing as to particular claims, that Plaintiffs’ FAC
13 has failed to meet certain pleading requirements, and that Plaintiff Allen’s class
14 allegations should be stricken because her claims are not typical of the class. Similasan
15 also requests reasonable attorneys’ fees, alleging that the lawsuit was brought in bad
16 faith.

17 The Court addresses each of these arguments in turn.

18 19 **A. Improper Joinder**

20 Similasan argues that Plaintiff Rideout was improperly joined into this action in the
21 FAC because her claims involve different products and arise out of different transactions,
22 with no questions of law or fact common to both sets of claims. Federal Rule of Civil
23 Procedure 20 allows the permissive joinder of plaintiffs where: (1) they assert any right to
24 relief jointly, severally, or in the alternative with respect to or arising out of the same
25 transaction, occurrence, or series of transactions or occurrences; and (2) any question of
26 law or fact common to all plaintiffs will arise in the action. Fed.R.Civ.P. 20(a)(1).

27 The Supreme Court and Ninth Circuit have both made clear that Rule 20 “is to be
28 construed liberally in order to promote trial convenience and to expedite the final

determination of disputes, thereby preventing multiple lawsuits.” League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977). See also United Mine Workers of America v. Gibbs, 383 U.S. 715, 724 (1966) (“Under the rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.”)

With that guidance in mind, the Court holds that Plaintiff Rideout was not improperly joined. While the concept of a “series of transactions or occurrences” is a fluid one, a broad reading of the language, as mandated by the case law, easily encompasses transactions in which both plaintiffs purchased Similasan’s products on the basis of allegedly false claims by the defendant.

B. Personal Jurisdiction

Defendant Similasan also argues that the Court does not have personal jurisdiction over it. California’s long-arm statute allows a court to exercise personal jurisdiction “to the full extent permitted by due process.” Bancroft & Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1086 (9th Cir. 2000); see Cal. Civ. Code § 410.10. A court has general personal jurisdiction where the defendant has “substantial” or “continuous and systematic” contacts with the forum state, such that the defendant may be haled into court for any action therein. See id. The defendant has offered evidence that it is a Colorado-based company that has no presence in California aside from limited sales through a handful of retailers, and the plaintiffs have not alleged any facts which contradict this. Therefore, the Court finds that the defendant has insufficient ties to establish general jurisdiction.

With regard to specific jurisdiction, it exists where “(1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant’s forum-related activities, and (3) the exercise of jurisdiction is reasonable.” Id. Defendant draws attention to the second

1 prong, arguing that Plaintiff Allen's claims should be dismissed for lack of jurisdiction
2 because she alleges that she bought Defendant's products in Florida.

3 The plaintiffs argue that the Court should hear Plaintiff Allen's claims because they
4 are related to Plaintiff Rideout's claims, insofar as they involve allegations that Similasan
5 engaged in deceptive marketing practices. Under the doctrine of pendent personal
6 jurisdiction, "a defendant may be required to defend a 'claim for which there is no
7 independent basis of personal jurisdiction so long as it arises out of a common nucleus of
8 operative facts with a claim in the same suit over which the court does have personal
9 jurisdiction.'" CE Distribution, LLC v. New Sensor Corp., 380 F.3d 1107, 1113 (9th Cir.
10 2004) (quoting Action Embroidery Corp. v. Atl. Embroidery, Inc., 368 F.3d 1174, 1180
11 (9th Cir. 2004)). Such a decision is left to the Court's discretion and relies on
12 "considerations of judicial economy, convenience and fairness to litigants." Action
13 Embroidery, 368 F.3d at 1181 (9th Cir. 2004) (quotations omitted).

14 Plaintiff Rideout alleges that she purchased Defendant's products in California.
15 Since Defendant did elect to sell its products through retailers in California, it has
16 purposefully availed itself of the forum state in a way related to those claims, and it is
17 therefore reasonable for the Court to exercise jurisdiction over Plaintiff Rideout's claims.

18 Plaintiff Allen, on the other hand, alleges that she purchased Defendant's products
19 in Florida, and has not otherwise alleged a connection between her transactions and this
20 forum. Nonetheless, in the interest of judicial economy, the Court elects to exercise its
21 discretion and retain jurisdiction over Plaintiff Allen's claims as per the pendent personal
22 jurisdiction doctrine. Allen's claims arise out of the same common nucleus of operative
23 fact as Rideout's claims, for which the Court does have jurisdiction over the defendant.
24 There is no prejudice to Similasan in hearing both cases together.

25 //

26 //

27 //

28 //

1 C. Standing

2 Similasan next argues that both plaintiffs lack standing to bring certain claims.
3 Specifically, Similasan argues that: (1) Plaintiff Allen lacks standing to bring her CLRA,
4 UCL, and FAL claims because she is a non-California resident and none of the alleged
5 conduct as to her claims took place in California; (2) Plaintiff Rideout lacks standing to
6 bring her CLRA claim because she cannot show that her alleged injury will be adequately
7 redressed through injunctive relief; (3) Plaintiffs lack standing to bring CLRA claims
8 because they failed to file an affidavit of proper venue as required by California Civil
9 Code § 1780(d); and (4) Plaintiffs lack standing to bring claims related to any other
10 Similasan products besides the ones they purchased because they did not suffer any
11 injury as to those other products.

12
13 1. CLRA, UCL, and FAL claims as to Plaintiff Allen

14 To establish standing, plaintiffs must allege “an injury [that is] concrete,
15 particularized, and actual or imminent; fairly traceable to the challenged action; and
16 redressable by a favorable ruling.” Clapper v. Amnesty Int’l USA, 133 S. Ct. 1138, 1147
17 (2013) (internal quotations omitted). Similasan argues that, because non-residents of
18 California cannot invoke California statutes for relief when none of the conduct or harm
19 has occurred in California, see In re Toyota Motor Corp., 785 F. Supp. 2d 883, 917-18
20 (C.D. Cal. 2011), Plaintiff Allen’s claims are not redressable by a favorable ruling.
21 Therefore, she would not have standing as to the CLRA, UCL, and FAL claims. The
22 Court agrees and **DISMISSES** the CLRA, UCL, and FAL claims as to Plaintiff Allen.

23 //

24 //

25 //

26 //

27 //

28 //

1 2. CLRA claim as to Plaintiff Rideout

2 Similasan argues Plaintiff Rideout lacks standing to bring her CLRA claim because
3 she cannot show that her alleged injury will be adequately redressed through injunctive
4 relief. In order to obtain injunctive relief, a plaintiff must show a “real and immediate
5 threat of repeated injury in the future,” Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d
6 939, 946 (9th Cir. 2011) (internal quotations omitted), and Similasan argues that Plaintiff
7 Rideout cannot do so because she is unlikely to buy Similasan’s products again, given
8 that she found them ineffective. Therefore, Similasan concludes, there is no threat of
9 repeated injury in the future.

10 For the reasons set forth in the Court’s decision in Mason v. Nature’s Innovation,
11 Inc., No. 12-cv-3019-BTM-DHB (S.D.Cal. filed May 13, 2013), which is incorporated in
12 relevant part herein, the Court agrees. While the Court appreciates that this complicates
13 enforcement of the CLRA in federal courts,² the fact remains that “[u]nless the named
14 plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class
15 seeking that relief.” Hodgers–Durgin v. de la Vina, 199 F.3d 1037, 1045 (9th Cir.1999).
16 Accordingly, the Court **GRANTS** Defendant’s motion to dismiss as to Plaintiffs’ claims for
17 injunctive relief under the CLRA, UCL and FAL. Because injunctive relief is the only relief
18 sought in connection with Plaintiff’s CLRA claim (Compl. ¶ 71), the Court dismisses the
19 CLRA claim in its entirety. The Court does not reach Defendant’s argument that the
20 CLRA claim should be dismissed because Plaintiffs failed to file the affidavit of proper
21 venue as required by Cal. Civ. Code § 1780(d).

22 //

23 //

24 //

25 //

26
27 ² However, Plaintiffs are not necessarily precluded from seeking an injunctive remedy
28 in state court. “In assessing standing, California courts are not bound by the ‘case or
controversy’ requirement of article III of the United States Constitution, but instead are
guided by ‘prudential’ considerations.” Bilafer v. Bilafer, 161 Cal. App. 4th 363, 370 (2008).

1
2 4. Other Similasan Products

3 Finally, Similasan argues that Plaintiffs do not have standing to pursue claims for
4 the additional Similasan products that Plaintiffs list but do not allege that they themselves
5 have bought, because they have not suffered any injury. However, “whether a class
6 representative may be allowed to present claims on behalf of others who have similar,
7 but not identical, interests depends not on standing, but on an assessment of typicality
8 and adequacy of representation.” Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524,
9 530 (C.D. Cal. 2011). Therefore, this issue is more properly raised at a class certification
10 hearing.

11
12 D. Pleading Requirements

13 Similasan’s argument as to Plaintiffs’ alleged failure to satisfy pleading
14 requirements is twofold: first, that Plaintiffs have failed to comply with the pleading
15 requirements set forth by the Supreme Court in Twombly, supra, and Ashcroft v. Iqbal,
16 556 U.S. 662 (2009), and second, that Plaintiffs have failed to meet the heightened
17 pleading requirements required by Federal of Civil Procedure 9(b) for alleging fraud or
18 mistake.

19
20 1. Pleading Requirements under *Twombly*

21 Under Twombly, a complaint need not contain “detailed factual allegations.”
22 Twombly, 550 U.S. at 555. However, Plaintiffs must plead “enough facts to state a claim
23 to relief that is plausible on its face.” Id. at 570.

24
25 a. CLRA, UCL, and FAL

26 The CLRA, UCL, and FAL all prohibit various deceptive and unfair business
27 practices. The CLRA, Cal. Civ. Code §§ 1750 *et seq.*, prohibits “unfair methods of
28 competition and unfair or deceptive acts or practices.” Cal. Civ. Code. § 1770. The UCL,

1 Cal. Bus. & Prof. Code §§ 17200 *et seq.*, prohibits any “unlawful, unfair or fraudulent
2 business act or practice.” Cal. Bus. & Prof. Code § 17200. The FAL, Cal. Bus. & Prof.
3 Code §§ 17500 *et seq.*, prohibits any “unfair, deceptive, untrue, or misleading
4 advertising.” Cal. Bus. & Prof. Code § 17500. Since the Court is dismissing the CLRA
5 claims, consideration is limited to the UCL and FAL.

6 Plaintiffs’ claims under these statutes are subject to the “reasonable consumer”
7 test, under which they must show that members of the public are likely to be deceived.
8 Williams v. Gerber Products Co., 552 F.3d 934, 938 (9th Cir. 2008) (citing Freeman v.
9 Time, Inc., 68 F.3d 285, 289 (9th Cir.1995). The advertising need not be actually false,
10 as long as it is misleading or “has a capacity, likelihood or tendency to deceive or confuse
11 the public.” Id. (quoting Kasky v. Nike, Inc., 27 Cal.4th 939, 951 (2002)) (internal
12 quotations omitted).

13 Plaintiffs have alleged that various Similasan products do not work as advertised
14 because “the active ingredients, even if they were otherwise effective, are ineffective due
15 to extremely high dilutions, the ineffectiveness of active ingredients in relieving such
16 symptoms, or both.” See, e.g., FAC ¶ 10. If true, then Similasan’s advertising certainly
17 would be likely to mislead or deceive the reasonable consumer, because a reasonable
18 consumer would believe, for instance, that a product called Stress & Tension Relief that
19 claims to “relieve[] symptoms of stress and simple nervous tension” would perform as
20 advertised, when in fact it does not because the active ingredients are ineffective. See
21 FAC ¶¶ 9-10. The same reasoning applies to the other Similasan products. Thus,
22 construing the FAC in the light most favorable to Plaintiffs, the Court holds that Plaintiffs
23 have sufficiently stated a claim under the UCL and FAL.

24
25 b. Breach of Express Warranty

26 “[T]o prevail on a breach of express warranty claim, the plaintiff must prove (1) the
27 seller’s statements constitute an affirmation of fact or promise or a description of the
28 goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was

1 breached.” Forcellati v. Hyland’s, Inc., 876 F. Supp. 2d 1155, 1162 (C.D. Cal. 2012)
2 (quoting Weinstat v. Dentsply Int’l, Inc., 180 Cal. App. 4th 1213, 1227 (2010)) (internal
3 quotations omitted).

4 As noted above, Plaintiffs allege that various Similasan products purported to
5 relieve certain symptoms and conditions, that they bought the products based on these
6 claims, but that the products did not conform to the claims made. While Similasan
7 argues that Plaintiffs have not identified with adequate certainty the statements at issue,
8 the Court disagrees. Plaintiffs have quoted verbatim the allegedly false or deceptive
9 language from Defendant’s packaging that they relied on in purchasing the products.
10 See, e.g., FAC ¶¶ 10, 16, 22, 28,34, & 40. The Court therefore holds that Plaintiffs have
11 stated a claim for breach of express warranty.

12
13 c. Breach of Implied Warranty

14 Under the California Commercial Code, a merchantable product must, among
15 other things, “[c]onform to the promises or affirmations of fact made on the container or
16 label.” Cal. Com. Code § 2314(2)(f). The Court holds that Plaintiffs have stated a cause
17 of action for breach of the implied warranty of merchantability, as they have alleged that
18 Defendants’ products did not conform to the promises or affirmations of fact made on the
19 container or label. Accord In re Ferrero Litig., 794 F. Supp. 2d 1107, 1118 (S.D. Cal.
20 2011) (declining to dismiss plaintiffs’ claim for breach of implied warranty of
21 merchantability where plaintiffs alleged that goods did not conform with the promises or
22 affirmations of fact made on the container or label).

23
24 d. Money Had and Received, Money Paid, and Unjust Enrichment

25 Similasan asserts that there is no separate claim for unjust enrichment in
26 California. However, “[u]njust enrichment is synonymous with restitution[,]” and “under
27 the law of restitution, an individual is required to make restitution if he or she is unjustly
28 enriched.” Durell v. Sharp Healthcare, 183 Cal. App. 4th 1350, 1370 (4th Dist. 2010).

1 Regardless of what it may be labeled, Plaintiff has stated a claim under California law.
2 Restitution does not require a predicate illegal act, and Plaintiff's claims, if true, suffice to
3 establish entitlement to restitution, since Plaintiff has alleged that Similasan enriched
4 itself at the expense of unwitting consumers. See McBride v. Boughton, 123 Cal. App.
5 4th 379, 389 (1st Dist. 2004) ("The person receiving the benefit is required to make
6 restitution . . . if the circumstances are such that . . . it is unjust for the person to retain
7 it.").

8 As to Plaintiffs' claims for money had and received and money paid, they are not
9 specific causes of action, but rather a "simplified form of pleading normally used to aver
10 the existence of various forms of monetary indebtedness." Id. at 394. Such common
11 counts may be pled "wherever one person has received money which belongs to another,
12 and which in equity and good conscience should be paid over to the latter." Avidor v.
13 Sutter's Place, Inc., 212 Cal. App. 4th 1439, 1454 (2013) (internal quotations omitted).
14 However, the remedy – disgorgement of the profits from the sales induced by the
15 allegedly false advertising – is the same as for unjust enrichment. Therefore, the Court
16 **DISMISSES** the claims for money had and received and money paid as redundant.

17 18 2. Statutes of Limitations

19 Similasan also argues that all the claims must be dismissed because Plaintiffs
20 failed to allege that they bought the products within the relevant statutes of limitations.
21 CLRA and FAL claims are subject to a three-year statute of limitations, and UCL claims
22 are subject to a four-year statute of limitations. See Yumul v. Smart Balance, Inc., 733 F.
23 Supp. 2d 1117, 1130 (C.D. Cal. 2010). While there is some contention as to the
24 limitations period for the breach of warranty claims, the Court holds that the statute of
25 limitations for both breach of express warranty and breach of the implied warranty of
26 merchantability is four years, as set forth in California Commercial Code § 2725. Cal.
27 Com. Code § 2725(1) ("An action for breach of any contract for sale must be commenced
28 within four years after the cause of action has accrued.") Finally, although neither party

1 addresses it, the Court holds that the statute of limitations for Plaintiffs' unjust enrichment
2 claim is three years, as prescribed by Cal. Civ. Proc. Code § 338(d) for "[a]n action for
3 relief on the ground of fraud or mistake." See, e.g., F.D.I.C. v. Dintino, 167 Cal. App. 4th
4 333, 347 (2008) (applying three-year statute of limitations under § 338(d) to unjust
5 enrichment claim).

6 Plaintiffs alleged in the FAC that they bought Defendant's products "[d]uring the
7 Class Period," FAC ¶¶ 8, 14, 20, 26, 32, 38, which they define as commencing January
8 1, 2000 and continuing to the present. Id. at ¶ 55. To the extent that the Class Period
9 encompasses time outside the limitations period, they contend that the delayed discovery
10 exception applies, under which a statute of limitations does not begin running until a
11 plaintiff discovers she may have a claim. A plaintiff invoking this exception must plead
12 facts alleging "(1) the time and manner of discovery [that they had a claim] and (2) the
13 inability to have made earlier discovery despite reasonable diligence." Yumul, 733 F.
14 Supp. 2d at 1130. However, the delayed discovery exception does not apply to UCL
15 claims. See Keilholtz v. Lennox Hearth Products Inc., C 08-00836 CW, 2009 WL
16 2905960 at *4 (N.D. Cal. Sept. 8, 2009).

17 Plaintiffs argue that the FAC meets both prongs. First, Plaintiffs state in their
18 opposition that each plaintiff's discovery "occurred shortly before the CLRA letter was
19 sent" on their behalf. See Pl. Opp. (ECF No. 16) at 18. However, they have not alleged
20 any facts to support this assertion. They cite to the CLRA letters themselves, but there is
21 nothing in the letters or the FAC that states when Plaintiffs discovered they may have a
22 claim, or the manner of their discovery.

23 Plaintiffs further argue that the FAC meets the second prong because it alleges
24 that a reasonable consumer, as Plaintiffs Allen and Rideout presumably are, would not
25 understand what the dilution levels mean as represented by Similasan on the label, and
26 therefore would not understand that Similasan's products are essentially nothing more
27 than placebos. See FAC ¶ 52. At this stage in the litigation, that is sufficient to meet the
28 second prong.

1 However, because Plaintiffs have failed to adequately allege the time and manner
2 of their discovery, or otherwise allege that their claims fall within the limitations period, the
3 Court **DISMISSES** the FAC with leave to amend.

4
5 3. Heightened Pleading Requirements Under Rule 9(b)

6 Under Federal Rule of Civil Procedure 9(b), “[i]n alleging fraud or mistake, a party
7 must state with particularity the circumstances constituting fraud or mistake.” Similasan
8 argues that Plaintiffs’ CLRA, UCL, and FAL claims are subject to this heightened
9 standard because they are based on allegations of fraud. The Court agrees. See
10 Yumul, 733 F. Supp. 2d at 1122-23 (applying Rule 9(b) standard to CLRA, UCL, and FAL
11 claims and citing precedent).

12 “[T]o satisfy the pleading requirements of Rule 9(b), a complaint must plead ‘the
13 who, what, when, where, and how’ of the misconduct charged, and further must set forth
14 what is false or misleading about a statement, and why it is false.” Id. at 1123 (citing
15 Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003)). Plaintiffs have
16 fulfilled the second half, that is, alleging why the statements are false or misleading.
17 However, they have failed to plead with adequate specificity the circumstances of the
18 transactions. In particular, Plaintiffs have not alleged *when* they bought Defendant’s
19 products. See Yumul, 733 F. Supp. 2d at 1124 (“Although the complaint alleges that
20 Yumul purchased Nucoa ‘repeatedly’ during the class period, it does not allege with any
21 greater specificity the dates on which the purchases were made. Moreover, the complaint
22 does not allege that Nucoa packaging remained consistent throughout the decade.”
23 (footnote omitted)).

24 Because Plaintiffs have failed to satisfy the heightened pleading standards of Rule
25 9(b), the Court finds the FAC deficient on this ground as well.

26 //

27 //

28 //

1 E. Whether Allen's Claims Are Typical of Class

2 Similasan also argues that Plaintiff Allen is not an adequate class representative
3 because, among other things, she is subject to unique defenses that are not typical of the
4 class. See Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir.1992) (“[C]lass
5 certification is inappropriate where a putative class representative is subject to unique
6 defenses which threaten to become the focus of the litigation.”) (citations omitted).
7 However, the Court agrees with Plaintiffs that such arguments going to class certification
8 are inappropriate at this time. Defendant may renew this argument if and when Plaintiffs
9 file a motion for class certification.

10
11 F. Improper Venue

12 Finally, Similasan argues that the venue is improper and that the action should be
13 dismissed or transferred accordingly. Under 28 U.S.C. § 1391(b), an action may be
14 brought in:

15 (1) a judicial district in which any defendant resides, if all
16 defendants are residents of the State in which the district is
 located;

17 (2) a judicial district in which a substantial part of the events or
18 omissions giving rise to the claim occurred, or a substantial
 part of property that is the subject of the action is situated; or

19 (3) if there is no district in which an action may otherwise be
20 brought as provided in this section, any judicial district in
 which any defendant is subject to the court's personal
 jurisdiction with respect to such action.

21 According to Similasan, none of these apply here. However, its arguments appear
22 to be confined to Plaintiff Allen, since her claims deal with transactions taking place in
23 Florida, and not Plaintiff Rideout, whose claims involve transactions in California. As
24 discussed above, the Court is electing to exercise supplemental jurisdiction over Plaintiff
25 Allen's claims in the interest of judicial economy. Since venue is proper as to Plaintiff
26 Rideout's claims, the motion to dismiss on this ground is **DENIED**.

27 //

28 //

1 G. Reasonable Attorney's Fees

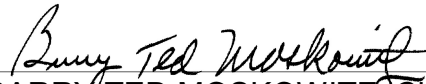
2 Similasan also requests reasonable attorney's fees, arguing that Plaintiffs brought
3 this action in bad faith because Plaintiffs' claims are "patently unmeritorious." Def. Mot. to
4 Dismiss (ECF No. 14-1) at 23. The Court finds that there is insufficient evidence of bad
5 faith by Plaintiffs and therefore **DENIES** Similasan's request for attorney's fees.

6
7 **IV. CONCLUSION**

8 For the reasons above, the Court **GRANTS** Defendant's motion to dismiss (ECF No.
9 14), **DENIES** its request for reasonable attorney's fees, and **DISMISSES** the FAC with leave
10 to amend. The Court further **DISMISSES** Plaintiffs' claims under the CLRA, and for money
11 had and received and money paid. Plaintiffs have twenty-one (21) days from the date of this
12 order to file a Second Amended Complaint.

13
14 **IT IS SO ORDERED.**

15 DATED: May 14, 2013

16 
17 BARRY TED MOSKOWITZ, Chief Judge
18 United States District Court
19
20
21
22
23
24
25
26
27
28